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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,854

09/11/2003

Paul A. Frechette

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EXAMINER

HARRELL, ROBERT B

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,854

Applicant(s)

FRECHETTE ET AL.

Examiner

Robert B. Harrell

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> . |

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1. Claims 1 and 3-14 are presented for examination.

2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.

3. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7, 8, 9, 10, and claim 13 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "said system"—claim 7 (line 1)[*claim 6 has a system*];
- b) "said interface card"—claim 8 (line 1)[*claim 6 has an interface card*];
- c) "said interface cards"—claim 9 (line 1) and claim 10 (line 2)[*claim 6 has a single interface card*];
- d) "said local computer"—claim 10 (line 2)[*claim 1 has a host computer while claim 6 has the local computer*];
- e) "the group"—claim 13 (line 2)[*suggest "a group"*].

5. As to 4 (a-e) above and per the applicant's 20 April 2006 arguments with respect to like rejection given above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term and an indefiniteness if the two are one and the same or different. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the

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need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

6. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of each reference is cited* and relied upon in this action as part of the substantial evidence of record for individual rejection under 35 U.S.C. 102(a), 35 U.S.C. 102(b), and/or 35 U.S.C. 103(a). Also, no temporal order was claimed for the acts and/or functions.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1 and 3-14 are rejected under 35 U.S.C. 102 (a)** as being anticipated by "Radiance 100 MBPS Redundant Interface Line Cards".

9. **Claims 1 and 3-14 are rejected under 35 U.S.C. 102 (b)** as being anticipated by "Radiance 100 MBPS Redundant Interface Line Cards".

10. **Claims 1 and 3-14 are rejected under 35 U.S.C. 102 (a)** as being anticipated by "Radiance 10 MBPS Redundant Interface Line Card".

11. **Claims 1 and 3-14 are rejected under 35 U.S.C. 102 (b)** as being anticipated by "Radiance 10 MBPS Redundant Interface Line Card".

12. These are four individual rejections based on two references Radiance 100 and Radiance 10. The variation between rejections under 35 U.S.C. 102(a) and 35 U.S.C. 102(b) is based on clarification of publication dates for each reference because:

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- a) Radiance 100 MBPS indicates a Copyright date ranging from 2001-2003. Unless evidence is provided to the contrary, the earliest date of 2001 will be assumed resulting in a rejection under 35 U.S.C. 102(b). For compact prosecution, a rejection under 35 U.S.C. 102(a) is based on a date of 2003 as further suggestive on page 28 "5660-000011 F 3/03" to be March 2003;
- b) Radiance 10 MBPS indicates a Copyright date of 2002. Unless evidence is provided to the contrary, the earliest date of March of 2002, as suggestive on page 24 (bottom "5660-000020D 3/02"), will be assumed resulting in a rejection under 35 U.S.C. 102(b). For compact prosecution, a rejection under 35 U.S.C. 102(a) is based on a date of 2002 beyond that of the suggestive date March 2003 of page 24 and of September 11, 2002.

13. Since each of the references were Installation & User Guides for one or more products (i.e., the Redundant Interface Line Card(s)), the applicant is reminded of the duty to disclose those matters of sale of those products to at least one person of the public and/or use by at least one person of the public and/or written documents with dates critical under 35 U.S.C. 102(b) and/or 35 U.S.C. 102(a). Even if the public, or at least one person of the public, was unaware of the contents of any specific card, the issue of "public use" of the card under 102(b) must be visited (MPEP 2133). Specifically, the applicant is reminded of the duty to disclose when at least one of the cards was offered to at least one person of the public, sale or not, and/or what was used by at least one person of the public, and/or what was the structural and/or functional consistency of those cards.

14. The grounds, and the rejections, for rejecting the claims as presented in examiner's prior Office Action, mailed 20 January 2006, continue and are hereby each incorporated by reference into this FINAL Office Action and applied equally as well to claim 1 and claims 3-14 as they currently stand amended and added.

15. The applicant argued, in his 20 April 2006 remarks, that:

- a) a rejection based on anticipation requires that a single reference teach every element of the claim (MPEP 2131). The identical invention must be shown in as complete detail as is contained in the ... claim per *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a claim is anticipated only if each and every element as set forth in the claim is found, . . . described in a single prior reference per *Verdegaal Bros. v. Union 011 Co. of California*, 8 14 F.2d 628, 631 , 2 USPQ2d 1051 , 1053 (Fed. Cir. 1987). However, as indicated in examiner's prior Office Action, there was clearly shown a plurality of physical ports including a main port, a primary port, and a secondary port which toggled connectivity away from a selected yet not active port to an active yet non-selected port when a time period expired equal to a given programmed delay. For example, Radiance 100 MBPS Redundant Interface Line Cards covered such starting with page 4 "switches from the primary port to the secondary port if the primary link fails" in a chassis on page 14 (claim 9) used between mediums (claim 8) such as Gigabit Ethernet (claim 7), such as SONAR (claim 13) and Fast Ethernet, and on page 6 "main", primary, and "secondary" ports, under a management card/logic (claim 10 and claim 12)"management module" (far right of the figure on page 14) in a programmed 2 second time delay period (claim 14) per page 20 ("(2) seconds") and also under a user interface per page 19 (between the figures) and on page 20 (last paragraph title "Note" WebBeacon was browser

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(GUI) based). Radiance 10 MBPS Redundant Interface Line Card also provided the same information and clearly anticipated a 10x link speed by the secondary reference published a year later and thus 10x over 100MBPS was anticipated;

b) please note that the User Guide refers to 100MBPS and not 1000MBPS or the corresponding failover programmable delay aspects. However, the delay was indicated above as a programmed 2 second time delay; since such is a finite value, it must be pre-selected (i.e., programmed). As for data link speed, the references mention, as indicated above, SONAR and Fast Ethernet while the second reference of 100MBPs was 10x over that of 10MBPs and thus 1000MBPs was an anticipated 10x value in addition;

c) these references were submitted in an Information Disclosure Statement by the Applicant. Also note that the Applicant does not specifically acknowledge the priority of this reference. However, the dates are clearly indicated as being published in March of 2003 and March of 2002 per the last line of the last pages as 3/03 and 3/02 and suggested previous publication with the indication of a date span;

d) the Applicant's fail-over system employs the Switch On No Activity Received (SONAR). However, such was covered above as shown in the references;

e) the prior references recite a fixed failover time period whereas the present invention is designed for a programmable time period. However, 2 seconds is within the time delay given and is finite and thus, as indicated above, programmed or programmable at least at the factory which is encompassed by the claimed terminology.

16. The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this office action:

a) a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligations under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102 (f) or (g) prior art under 35 U.S.C. 103.

18. Claims 1 and 3-14 are rejected under 35 U.S.C. 103 (a) as being unpatentable by "Radiance 100 MBPS Redundant Interface Line Cards".

19. Claims 1 and 3-14 are rejected under 35 U.S.C. 103 (a) as being unpatentable by "Radiance 10 MBPS Redundant Interface Line Card".

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20. That which was anticipated above was obvious and applies to claim 1 and claim 3-14 herewith. However, while "Fast Ethernet" suggested greater bandwidth and data link speed, it would have been obvious to those skilled in the art to implement the disclosed reliance to higher speed links such as Gigabit Ethernet and/or even fiber optics SONAR because technology constantly is advancing the state of the art with faster new generation items (i.e., new CPUs are always faster than older generation CPUs thus mandating and dictating faster connection speeds to keep up with the faster running softwares). As evidence to such, the Radiance 100 MBPS Redundant Interface Line Cards covers a link 10x faster than Radiance 10 MBPS Redundant Interface Line Cards published a year prior. Thus the references themselves suggest the obviousness of faster speed links. Due to this greater speed and bandwidth, it would have been obvious to those skilled in the art to change the programmed 2 second time delay because it would permit for the more dynamic nature of the links' speeds. The programmable (i.e., factory programmed) time delay falls within, and is encompassed by, "programmable time delay" limitation scope and can be obviously reprogrammed at the factory to a different value or via the WebBeacon. Thus it would have been obvious to those skilled in the art to use variable oscillators or delay elements such as by replacing the programmed 2 second delay with an addressable programmable timer (i.e., a SE555/NE555 (555Timer)) or an addressable digital potentiometer based oscillator to adhere to the higher speed 10x speed link since such faster speed link, as shown obvious by the references themselves, required more dynamic time delays.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

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25. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

A handwritten signature in black ink, appearing to read 'R. B. Harrell', with a long horizontal flourish extending to the right.

ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142